

TESTIMONY
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SENATE COMMITTEE ON COMMERCE, SCIENCE
AND TRANSPORTATION
ELECTION REFORM HEARING
MAY 8, 2001

Chairman McCain, Ranking Member Hollings, distinguished members of this Committee, I would like to thank you for holding this important hearing on Election Reform. I look forward to legislation this session such as the American Voting Standards and Technology Act, introduced by Chairman McCain and Ranking Member Hollings, in order to develop voluntary standards to ensure greater accuracy at every stage of the voting process.

Mr. Chairman, I am a product of the 1965 Voting Reform Act. I am also a direct result of the 1965 Voters Reform Act, which created the 18th Congressional District of Texas. Since its creation, three other Americans and myself have proudly served the people of Texas. For myself, voting is a privilege, a responsibility, and a passion. Yet, thirty-five after the passage of the Voters Rights Act there are still members of our Southern states including Texas who are still not registered to vote.

I believe that we must continue to address the overwhelming evidence of grave voting irregularities and voting rights violations in the recent presidential election in what was the closest and most contested presidential election in the history of our great nation.

It is imperative that Congress continues to engage in a serious review and comprehensive reform of our election process in this nation. The disenfranchisement of voters in the federal electoral process remains a chilling threat to the integrity of our democratic system in America.

Mr. Chairman, it was Alexander Hamilton in his Federalist Papers who recognized the “plain proposition, that EVERY GOVERNMENT OUGHT TO CONTAIN IN ITSELF THE MEANS OF ITS OWN PRESERVATION.” The right to vote, and to fully exercise that vote, is a vital component of our collective preservation.

On November 7th, 2000, only a fraction of Americans were able to exercise their right to vote and have those votes counted, while thousands, and perhaps even millions of voters were denied this constitutional right as guaranteed by the Fifteenth Amendment. It is horrifying to me that such systemic mistakes were made in this election. We must address this today. But beyond these mistakes, there have been serious allegations of

violations of the Sections 2 and 5 of the *Voter Rights Act of 1965*, 42 U.S.C. sec. 1973, which mandates the obligation and responsibility of the Congress to provide appropriate implementation of the guarantees of the Fifteenth Amendment to the Constitution, which states “the fundamental principle that the right to vote shall not be denied or abridged by the States or the Federal Government on account of race or color.” Yet we know today, that such violations of fundamental voting rights did occur during the November 7th elections throughout the nation.

These irregularities also raise potential violations of several provisions of the *National Voter Registration Act of 1993*, 42 U.S.C. sec. 1973gg-5(a) which affirms the right of *every* U.S. citizen to cast a ballot and have that ballot be counted. These must be protected and enforced without compromise and without regard to the voter's race.

Victims and witnesses to Election Day irregularities and discriminatory practices at voting precincts came forward in significant numbers to tell their stories of how their votes were discarded and their voices silenced. My office remains inundated with countless letters, phone calls, and e-mails of stories of violations, and demands that justice and order be restored to this process.

In recent months several public hearings have been held around the nation to discuss and analyze the testimony of witnesses and victims of voting irregularities, and to seek solutions. Some of these hearings include a Democratic Caucus Special Committee on Election Reform hearing held in San Antonio, Texas, an NAACP hearing, and a Florida State Assembly hearing. Testimony heard from law enforcement, poll workers, educators, civil rights organizations, state and federal legislators, and disenfranchised voters and recounted the following:

1. That citizens who were properly registered were denied the right to vote because election officials could not find their names on the precinct rolls;
2. that registered voters were denied the right to vote because of minor discrepancies and clerical errors;
3. that first-time voters who sent in voter registration forms prior to the state's deadline for registration were denied the right to vote because their registration forms were not processed;
4. that African-Americans voters were singled out for criminal background checks at some precincts and that one voter who had never been arrested was denied the right to vote after being told that he had a prior felony conviction;
5. that African-American voters were required to show photo identification while white voters at the same precincts were not subjected to the same requirement;

6. that voters who requested absentee ballots did not receive them but were denied the right to vote when they went to the precinct in person on Election Day;

7. that hundreds of absentee ballots of registered voters in various counties throughout the nation were improperly rejected by the Supervisor of Elections and not counted;

8. that African-American voters who requested assistance at the polls were denied assistance;

9. that African-American voters who requested the assistance of a volunteer to translate the ballot for limited proficient voters were denied such assistance.

The need for election reform is all American's challenge. President Bush himself recognized this urgency, telling members of Congress: "This is America. Everyone deserves the right to vote." Congress was reaffirmed of President Bush's commitment to the protection of the right to vote when the President's spokesman later assured members of Congress that the "President wants to make certain that one of the focuses of attention this year is electoral reform." A letter recently sent to President Bush by virtually every House Democrat, called on the administration fulfill this promise by providing "essential guidance and leadership on a national problem", yet today, half a year after the election, we are still without such leadership. So I call on the Attorney General of the United States to begin a full investigation of all alleged voting improprieties. We must clear the air.

So what be done to remedy these problems for the future? According to a recent Washington Post article by David Broder, since the 2000 presidential election more than 1,500 election reform bills have been introduced in state legislatures around this nation. The American Civil Liberties Union and other organizations have been filing suits in California and in other states demanding that uniform methods of casting and counting ballots be put in place. I applaud these efforts, and would like to recognize, for example, the recent election reform efforts of the Florida legislature to eliminate outdated punch card technologies, and legislation signed last month by Georgia Gov. Roy Barnes requiring that every precinct install up-to-date touch-screen voting machines by the next presidential election. These efforts are a step in the right direction, and I believe that outdated technology is a large part of the problem.

In my state of Texas, 14 counties, including Harris County, which I represent, still use "punch card systems" like those used in Florida during the 2000 presidential election. In Texas during the 2000 elections nearly 1.7 million votes were cast statewide using punch card systems with an average of 1.53% under votes and .54% over votes, while over 4 million votes were cast statewide using modern "optical scan systems" with an average of .51% under votes and .12% over votes. These numbers suggest that the newer technologies reduce mistakes, and may even expedite increased volume of votes cast.

One study done by the House Government Reform Committee analyzed upgrading voting technologies in Detroit which has the highest poverty rate of any U.S. city, as well as one of the highest minority populations. It studied the effects of voter education and the replacement of the antiquated punch card machines, such as those used in Florida, with new optical scanner machines that let voters know when the voter made a mistake and gave the voter an opportunity to fix it. The results of this study are staggering. The percentage of uncounted votes for President in Detroit decreased by almost two-thirds, from almost 50% above the national average in the 1996 election in which punch cards were used, to almost 50% below the national average in the 2000 election in which the new machines were used. Detroit also reduced the percentage of uncounted votes significantly, from 7% in precincts with high rates of uncounted votes in 1996, to less than 1% using the new machines in 2000.

Finally, even districts with increased turnout where large numbers of inexperienced or infrequent voters showed up, had low rates of uncounted ballots. For example, in the 18th election district in Detroit turnout increased by over 1000 votes between 1996 and 2000, yet the rates of uncounted votes for President decreased from 2.9% to 0.8%.

Another process that must be reformed is called “purging” which includes eliminating a person’s name from the voting rolls when that person has not voted recently, thus requiring the person to re-register before voting again. This is particularly problematic because voters are often not notified when their names have been purged. As a result, when the person arrives at the polls to vote, he or she is denied access. According to testimony by Hilary O. Skelton of the NAACP before the Senate Committee on Rules and Administration, in the 2000 election in Florida, purging occurred disproportionately in predominately African-American precincts and counties including Duval and West Palm Beach.

In my state of Texas, when a voter is about to be purged, Texas sends a notice to the voter. If there is no response the county assumes that the voter has moved out of the district, then purges the name from the rolls. This notification is not done in all states, but is crucial in informing the voter that he/she is about to be purged. However, it does not provide notification to voters who have moved within the voting district.

According to a memorandum from Texas Secretary of State Henry Cuellar to the Texas legislature, on November 30, 2000, counties across Texas purged about 750,000 voters after the allowable four-year period of inactivity expired. This kind of automatic and simplistic process of purging people from the voting rolls is an extremely harsh and unfair practice. Worse still, this process varies from state to state and from county to county.

If someone has voted recently, it demonstrates his or her intent to be involved in the electoral process. We must ensure that they have every opportunity to demonstrate that intent, have their vote counted, and have their voice heard.

I suggest that there be a uniform national ten-year period of inactivity before a voter's name is purged. This is a reasonable and set amount of time that would give people an opportunity to anticipate being purged, so that they can either vote, thereby resetting the ten-year clock, or, if they have already been purged, to allow them the opportunity to re-register before going to the polling location to vote.

Another necessary improvement is to ensure "provisional voting" in every election. As a result of voting roll irregularities and purging, many voters are erroneously denied the right to vote at the polls. To remedy this problem, many jurisdictions have begun using "provisional ballots" which can be cast at their regular voting precinct in the event that they are denied a regular ballot, but may also be obtained by voters at another precinct within the jurisdiction in the event their precinct closes early or runs out of ballots.

Also needed is education. We must educate those who work at the polls and in the local precincts, so that they can anticipate problems beforehand, and prepare. For example, in precincts where there are large numbers of non-English-speaking people, workers should be informed so that bi-lingual poll workers are on-site. Workers should also be educated in the newer voting technologies that are developing.

We must also educate our law enforcement officers, so that they understand the legalities and cultural sensitivities inherent in the voting process, and do not inadvertently interfere.

We must also educate the media so they are more sensitive to the influence and impact that their reporting has on people who have not yet made it to the polls. Many people, myself included, believe that the media played a key roll in last year's election by calling the election too early for Al Gore and Joe Lieberman, which resulted in many people not going to the polls to vote, believing that their vote would not have an effect on the election.

And lastly, we must educate and empower our voting citizens, so that they know their rights, understand how the voting process works, and can operate the newer technologies that are anticipated in the near future.

To help facilitate greater and more regular voter turnout, I strongly believe that we need to make Election Day a national holiday in order to reconcile employment and school commitments, which keep many people from voting or participating in this important election process. Such a holiday would also allow our young people to get involved in the voting process, and would allow for the hiring of more young people at the polling locations. In order for there to be true electoral reform, our youth must take a more active roll, and we must give them the tools and the opportunity to do so.

That's why I introduced H.R. 934 in Congress on March 7, 2001, establishing National Election Day on the 2nd Tuesday of November, in presidential election years as a legal public holiday. This bill will merely federalize what some states have done with

great success, so that students, employers, and employees in the private sector will be able to exercise their constitutional right to vote or take part in the electoral process as election volunteers with no restraints. Everyone should be able to afford to cast his or her vote. As a nation, we simply cannot afford not to.

In her testimony before this Committee today, Arizona Secretary of State Betsy Bayless stated that: “[f]ree and fair elections are the foundation of American Democracy.” Maryland Secretary of State John T. Willis added that: “[t]he right to vote is the essence and foundation of the constitutional framework of our federal and state governments in the United States. The recognition of the sanctity and power of the right to vote requires that its exercise not be diminished or impaired.” To ensure that this sacred right is secured, I have also introduced H.R. 60, the Secure Democracy for All Americans Act, which would develop greatly needed uniform electoral standards which may be adopted by the States by calling on the establishment of a Commission on the Comprehensive Study of Voting Procedures to study and report to the President and Congress on all issues relating to voting procedures in Federal, State, and local elections. This study can be extremely helpful in federal government research of voting technologies, and can also provide important information on the actual testing of new voting systems prior to their widespread implementation in local governments.

In addition, I have drafted a bill that would modify the Secure Democracy for all Americans Act by assigning the Federal Election Commission the roll of providing grants to states and local communities to enable them to efficiently implement this study.

Finally, I have recently founded the bipartisan Congressional Election Caucus to enable all members of Congress to engage in a serious review and dialogue of the election process in this nation as a recognition of the disenfranchisement of voters who lost their fundamental rights as citizens of the United States, to vote because of voter confusion, poor voter machinery, or work commitments.

While statutes were not enacted during this past election to prevent minorities from voting, deliberate actions were taken that prevented minorities, women, the disabled, the elderly and thousands of Americans from invoking their constitutional right to vote.

These actions demonstrate a grave injustice upon our democratic system. Sadly, those around the world who look to us as a symbol of justice and freedom have borne witness to one of our darkest hours, and the dimming of our great light that leads their way.

We must not let these actions be revived again. To do so would wash away the blood stains, and tears of our founders, our ancestors, our parents and even ourselves who have fought for the right of every citizen’s voice to be heard regardless of race, ethnicity, gender, age, and yes, even political affiliation.

The intent of the American people to freely and without undue hardship choose their elected officials is central to this democracy, and to democracies around the world. Professor Stephen Ansolabehere stated in his testimony that: “[v]oters need a way to communicate their preferences and intentions: dropping a chit in a dish, raising their hands or voices, marking a piece of paper, pulling a lever, or, now, touching a screen.” Standards for determining such intent must be in place by the 2002 elections. Hopefully, the Supreme Court decision in *Bush v. Gore* has opened the door to a process for establishing such standards for determining voter intent.

The Fifteenth Amendment of the Constitution tells us that “The Congress shall have the power to enforce this article by appropriate legislation.” So, in the words of the Reverend Martin Luther King: “[T]he hour is late. And the clock of destiny is ticking out. We must act now before it is too late.” Thank you.